



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0782]**

**RIN 1625-AA00**

### **Safety Zone; Delaware Bay and River, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Delaware Bay and River to restrict and protect vessel traffic during the transit of Post-Panamax gantry cranes from the Atlantic Ocean to the Port of Philadelphia. This action is intended to protect mariners and vessels from the hazards associated with the transportation of these large cranes. Entry of vessels or persons into this zone will be prohibited unless a vessel meets the stated requirements or is specifically authorized by the Captain of the Port Delaware Bay. This rule compliments a safety zone found in docket number USCG-2019-0784 addressing safety risks while the vessel carrying the cranes is moored at the Port of Philadelphia.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through October 15, 2019. For the purposes of enforcement, actual notice will be used from September 14, 2019 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0782 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard Sector Delaware Bay, Waterways Management Branch; telephone (215) 271–4889, email [Edmund.J.Ofalt@uscg.mil](mailto:Edmund.J.Ofalt@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The M/V ZHEN HUA 26 is transporting post-Panamax gantry cranes to ports within the United States. These large cranes extend beyond the width of M/V ZHEN HUA 26 on both sides of the vessel and create a navigational hazard to vessels operating within a certain proximity. The cranes are fastened in a manner that facilitates passage through the open ocean. Upon arrival to the Delaware River, M/V ZHEN HUA 26 will transit to anchorage and begin an approximately four day process of removing the sea fastenings. The M/V ZHEN HUA 26 will then proceed, conditions permitting, to berth at the Port of Philadelphia Greenwich Terminal to deliver the cranes. To ensure a safe transit during its inbound transit from its initial anchorage to the Greenwich Terminal, the

vessel may stop to anchor along the way in a designated anchorage area, as set forth in 33 CFR 110.157, for a short time if needed due to weather and tidal requirements.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the anticipated arrival of M/V ZHEN HUA 26 to the Delaware Bay Captain of the Port zone. The rule must be in force by September 14, 2019, to ensure the safety of waterway users and the general public from hazards associated with the transport of post-Panamax gantry cranes within the Delaware Bay Captain of the Port Zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with transportation of post-Panamax gantry cranes from anchorage in Delaware Bay to its berth at Greenwich Terminal in Philadelphia, PA.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034

(previously 33 U.S.C. 1231). The COTP has determined that there are potential hazards associated with the transportation of post-Panamax gantry cranes. The COTP Delaware Bay has determined that the potential hazards will be a safety concern for anyone within a 200-yard radius of the vessel except when the vessel is moored at Greenwich Terminal in Philadelphia, Pennsylvania. This rule is needed to protect personnel and vessels in the navigable waters within the safety zone while the cranes are being transported.

#### **IV. Discussion of the Rule**

The safety zone includes all navigable waters within 200 yards of M/V ZHEN HUA 26 when the vessel first anchors within the Delaware Bay Captain of the Port Zone until it completes its inbound transit to and mooring operations at Greenwich Terminal in Philadelphia. Because the vessel will not be carrying cranes on its outbound transit, this rule will not apply to its outbound transit. The anticipated date of arrival for the M/V ZHEN HUA 26 is September 14, 2019. However, inclement weather and other unforeseen circumstances may necessitate a change in the date of transit upriver. Sector Delaware Bay will notify the maritime community of the date of transit, at a minimum, via marine safety information bulletin and broadcast notice to mariners.

To ensure a safe transit during the inbound transit from the initial anchorage to Greenwich Terminal, the vessel may stop to anchor along the way in a designated anchorage area, as set forth in 33 CFR 110.157, for a short time if needed due to weather and tidal requirements. The safety zone will remain in place during the time(s) the vessel is anchored. Vessels will be allowed to transit through the safety zone without seeking advance permission from the COTP Delaware Bay while the M/V ZHEN HUA 26 is anchored in a designated anchorage area if they meet the following requirements: transit

through the safety zone at the minimum safe speed to reduce wake and maintain steerage, and, except for towing vessels designated as assist tugs and operating in such capacity, do not overtake, meet, or otherwise pass any other unmoored or unanchored vessel while transiting through the safety zone. Vessels which do not meet all of the requirements listed above are prohibited from entering or transiting the safety zone without prior approval of the COTP Delaware Bay. Additionally, vessels must ask permission to enter or transit the safety zone any time the M/V ZHEN HUA 26 is underway. Vessels requesting to enter or transit the safety zone may contact the Sector Delaware Bay Command Center via VHF-FM channel 16. The Coast Guard anticipates that most vessels will be able to freely transit around the safety zone and will not need to seek permission to enter the zone while the M/V ZHEN HUA 26 is underway.

There will be a pre-designated safety vessel escorting the ZHEN HUA 26 while it is underway to monitor the flow of traffic and inform mariners that the gantry crane transit is in progress.

The Coast Guard is establishing a second safety zone through a separate rulemaking found in Docket number USCG-2019-0784 to ensure the safety of vessels and persons transiting the area during offloading operations once the vessel is moored at the terminal.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the short duration and traffic management of the safety zone. The safety zone will allow for vessels to transit through the safety zone with permission while the M/V ZHEN HUA 26 is underway or in a designated anchorage without permission if certain requirements are met. The Coast Guard anticipates that most vessels will be able to freely transit around the safety zone and will not need to seek permission to enter the zone while the M/V ZHEN HUA 26 is underway. For these reasons, the impact on waterway traffic is expected to be minimal.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human



environment. This rule involves a moving safety zone lasting only the duration of transit of a vessel carrying post-Panamax gantry cranes. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0782, to read as follows:

**§ 165.T05-0782 Safety Zone, Delaware River, Philadelphia, PA.**

(a) Location. The following area is a safety zone: All navigable waters within 200 yards of the M/V ZHEN HUA 26 while the vessel is underway or anchored within the Delaware Bay Captain of the Port Zone.

(b) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) In accordance with the general safety zones regulations in subpart C of this part and except for as described in paragraph (c)(3) of this section, vessels may not enter, remain in, or transit the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, unless moored or anchored outside the main navigational channel, contact the COTP or the COTP's representative via VHF-FM Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) A vessel may transit the safety zone described in paragraph (a) without permission from the COTP if all of the following criteria are met:

(i) The M/V ZHEN HUA 26 is anchored in a designated anchorage as defined in 33 CFR 110.157.

(ii) The transiting vessel maintains the minimum safe speed to reduce wake and maintain steerage.

(iii) Unless it is a towing vessel designated as an assist tug and operating in such

capacity, the transiting vessel may not meet, overtake, or otherwise pass another unmoored or unanchored vessel within the safety zone.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. (1) Enforcement of the safety zone will begin when the M/V ZHEN HUA 26 commences initial anchoring operations within the Delaware Bay Captain of the Port zone until midnight on October 15, 2019 or until mooring operations are completed at Greenwich terminals in Philadelphia, PA.

(2) The anticipated date of arrival for the M/V ZHEN HUA 26 to the Delaware Bay Captain of the Port zone is September 14, 2019.

Dated: September 11, 2019.

Scott E. Anderson,  
Captain, U. S. Coast Guard,  
Captain of the Port, Delaware Bay.

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